HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.16598 of 1997

Dated 13th Day of September, 2006

Between:

Andhra Bank Farmers Service Cooperative Society Ltd., Ookal, Geesugonda Mandal Warangal District rep. by its Managing Director, Shaik Sayeed, S/o.Shaik Mahammad, R/o.Ookal, Geesugonda Mandal, Warangal Dist. .. Petitioner

And

The Vice-Chairman, Kakatiya Urban Development Authority, Warangal, Warangal District and another .. Respondents

O R D E R:

The petitioner-Andhra Bank Farmers Service Cooperative Society Limited, Ookal filed this writ petition for a mandamus declaring the proceedings initiated by the 1st respondent which culminated in demand notice dated 9.4.1997 made in Proceedings Rc.No.C3/56/97/518, for Rs.2,17,305/- towards the development charges for regularization of constructions already made by the petitioner-society, as illegal and arbitrary.

The learned counsel for the petitioner has asserted that no such demand notice can be issued inasmuch as the 1st respondent-Kakatiya Urban Development Authority, has no authority at all to make such demands since the area where the petitioner's industry is situated would not fall within the limits of Kakatiya Urban Development Authority. He has also contended that even otherwise the demand made is not in accordance with law as far as the imposition of charges of Rs.1,58,684.30 in relation to the vacant site is concerned, and the same is

without jurisdiction inasmuch as such claim if any can be made only by the revenue authorities and not by the 1st respondent.

On the contrary, the learned counsel representing the 1st respondent had taken this Court to Sections 13 and 14 of the A.P. Urban Areas (Development) Act, 1975 (for brevity "the Act") and would contend that inasmuch as specifically the fact that this area would not fall under the Urban Development Authority had been reduced to this ground and also in the light of G.O.M.S.No.1177, dated 6.11.1981, there cannot be any doubt or controversy that this area falls within the limits of the 1st respondent. The learned counsel would also contend that the demand was made in the light of the provisions of Sections 13 and 14 of the Act.

Heard the learned counsel for both the parties.

It is stated in the affidavit filed in support of the writ petition that the petitioner is a Society registered under the A.P. Cooperative Societies Act, 1964. It is stated that the operation of the petitioner-society is spread over in as many as 12 villages having headquarters at Ookal village. The society was financed by the Andhra Bank. In order to secure their funds the bank deputes its employee as Managing Director to manage the affairs of the society. The object of the petitioner-society is to advance short

and long-term loans and also to supply fertilizers, pesticides, seeds and other allied agricultural products to its members. It also undertakes procurement of cotton at the existing market rate and payment of sale proceeds to its members without deducting any expenses. The petitioner-society is functioning without any profit motive, but to serve its members, who are all agriculturists by profession. When the petitioner-society was registered, the then Managing Committee decided to purchase about Ac.04.00 cents of land in S.Nos.617, 736/A and 32 situated in Ookal village which is abutting to the main road leading from Warangal to Narsampet. This place was identified for purchase because it abuts to the main road and it would be convenience to all the members residing in the 12 villages. The petitioner-society obtained permission from the Gram Panchayath, Ookal for construction of compound wall, two floors of the office building and three godowns in a phased manner and they were completed in the year 1986-87. The petitioner-society submitted an application seeking an aid from the District Collector, Warangal under Telugu Grameena Kranti Patham for constructions of compound wall. The District Collector, Warangal by his proceedings in Rc.No.1220/DLO/IV/96, dated 9.3.1997, granted Rs.2,10,000/- under Telugu Grameena Kranthi Patham for construction of compound wall. The District Collector, by

his proceedings in Rc.No.F3/1012/1986, dated 11.12.1996, issued orders for the supply of 400 bags of cement on payment of cost, and at that time, the cement was having two rates i.e. one was on control rate and the other was de-controlled rate for construction of office building and godowns. The petitioner completed the construction of compound wall and godowns in 1986-87. It is further submitted that the petitioner-society submitted an application requesting the District Collector and the Chairman of Planning Board, Warangal to grant funds under Telugu Grameena Kranthi Patham for construction of office building-cum-shopping complex. The application was placed in the meeting of the District Planning Board held on 29/30.10.1986 under the chairmanship of the then Social Welfare Minister and an amount of Rs.1,93,500/- was sanctioned under Telugu Grameena Kranti Patham out of the total cost of Rs.3,87,000/-. The petitioner constructed three godowns for the purpose of storing seeds, fertilizers, pesticides and other allied material meant for agriculture and the cotton procured from its members. In one of the godowns, the petitioner fixed one ginning mill for ginning the cotton procured from the members. The petitioner also obtained permission from both Gram Panchayat, Ookal and the Inspector of Factories, Medical and Health for construction of compound wall. The petitioner constructed three

godowns and office-cum-shopping complex as per the building bye-laws leaving sufficient place around them and they are absolutely not in violation of any rules. It is also stated that the 2nd respondent issued notice dated 27.11.1996 in Proceedings Rc.No.162/96 directing the petitioner to discontinue any further construction or development of the land and submit a reply as the constructions were made in violation of the provisions of the Act. The petitioner submitted its explanation stating that it is a society working for the development of agricultural farmers inasmuch as it comes under the definition of the institution, thereby the provisions of the Act have no application. Further, the entire constructions were made after obtaining permission from the competent authorities, as such, the question of construction of buildings in violation of provisions of Act does not arise. Thereafter, on 20.2.1997, the 1st respondent issued notice demanding Rs.2,17,305/- towards the development charges for regularization of constructions, to which, the petitioner submitted its explanation dated 20.3.1997 stating that the society was formed by the farmers for their economic development. The activities of the petitioner-society come under the definition of an institution formed for the welfare of the farmers, as such, it is not liable to pay any amounts. It seems the 1st respondent, being not

satisfied with the explanation dated 20.3.1997, issued further demand notice dated 9.4.1997 demanding Rs.2,17,305/- to be payable within 5 days from the date of receipt of the notice, failing which action would be taken as per the Act. In such circumstances, the petitioner approached this Court praying for appropriate remedy.

It is stated in the counter affidavit filed by the 1st respondent that the demand notice dated 9.4.1997 was issued for payment of developmental charges of Rs.2,17,305/- as per Section 21(1) of the Act and also G.O.Ms.No.51 Municipal Administration and Urban Development Department, dated 5.2.1996 for regularization of construction made by the petitioner. It is further stated that the grant of industry permission by the Gram Panchayat requires prior approval of the Director of Town and Country Planning, Government of Andhra Pradesh, Hyderabad, Under Section 124(4)(C) of the Gram Panchayat Act, 1964 and also under Section 56(3) of the Act. The approval of competent authority i.e. Kakatiya Urban Development Authority is necessary for issuing permission for industries. The granting of permission for industry by the Gram Panchayat without the permission of Kakatiya Urban Development Authority is not valid. The petitioner constructed three godowns and office-cum-shopping complex without leaving sufficient space around them which is contrary to the bye-

laws of the buildings and against the zoning regulations and the construction made is in violation of rear set. It is further stated that there is no provision or Act exempting the Institutions from payment of development charges to the 1st respondent. The petitioner's site is an industry, therefore, it is considered as industry, as such, the Kakatiya Urban Development Authority is empowered to collect the developmental charges as per the provisions of the Act. The petitioner's industry and village falls within the jurisdiction of the Kakatiya Urban Development authority as per G.O.Ms.No.1177 M.A., dated 6.11.1981. The 1st respondent controls the development of the area as per G.O.Ms.No.451 M.A., dated 26.8.1988. In exercise of the powers conferred under Sub-section (1) of Section 231 of Andhra Pradesh Gram Panchayat Act, 1964, Act 2 of 1964 read with Sub-section(1) and 8(2) of Section 36 of the Act, Act No.1 of 1975, the powers relating to the grant of building permission, layout, location of industries which are vested under Sections 125 and 125-A of A.P.G.P. Act are transferred to Urban Development Authorities, and Urban Development is authorized to exercise those powers with immediate effect, as such local authority is not empowered to grant permission for establishing the industry and the permission granted by the Gram Panchayat without the approval of the Kakatiya Urban

Development Authority is not valid. However, this respondent is granting permission as and when application are forwarded by the Gram Panchayat and taking necessary action as per the rules in respect of unauthorized constructions. It is further stated that the Government issued notification under Section 36 of the Act suspending the powers of the Gram Panchayat in G.O.Ms.No.451, dated 26.8.1988 and G.O.Ms.No.408 M.A., dated 8.8.1991 in matters relating to the grant of permission for construction for development and use of land. However, the preparation of master plan and zonal plans are in progress. The petitioner cannot undertake any developmental activity without the approval of the Kakatiya Urban Development Authority as per Section 13(4) of the Act. Any developmental activity taken up by the petitioner without the prior approval of this respondent would be in violation of the provisions of the Act. The Kakatiya Urban Development Authority is constituted for planned development. The charges for development were also assessed by this authority since this respondent is vested with the powers to charge the developmental charges. It is further stated that as per Section 13(4) of the Act, no activities for developing the land within the area shall be undertaken by any person or body including any Government Department, unless permission for such development is obtained in writing

from the Authority in accordance with the provisions of this Act. In the instant case, this respondent issued notice to the petitioner for regularization of unauthorized construction and development, but not for change of the land in question. As per Section 27(1) of the Act, this respondent is empowered to levy the developmental charges on the institution. As per Section 42(ii), the Kakatiya Urban Development Authority is empowered to make an order directing that such development shall be removed by demolition, felling or otherwise by the owner within 5 to 15 days by serving notice, failing which the authority may remove such developments besides collecting removal charges as arrears for land revenue. These are the respective stands taken by the authorities.

This Court in W.P.M.P.No.20123 of 1997, dated 24.7.1997 made the following order:

> *"Having regard to the fact that the constructions were made as long ago as in the year 1986 after obtaining the permission of the local authority and at the time of making the construction, the land was outside the purview of the Urban Development Authority, there will be interim stay of further proceedings pursuant to the impugned notice dated 9.4.1997 including demolition of the buildings constructed by the petitioner pending further orders."*

Several grounds had been raised inclusive of whether this area falls within the limits of the Urban Development Authority or not, however, in the light of G.O.Ms.No.1177,

dated 6.11.1981, there cannot be any doubt or controversy that this area falls within the limits of the 1st respondent. In view of the same, the applicability of Sections 13 and 14 of the Act to the area of the land in question also cannot be in serious controversy. Hence, the contention put forth by the learned counsel of the petitioner that the 1st respondent has no authority at all to make such a demand cannot be sustained. However, though a general ground relating to the lack of authority on the part of the 1st respondent to make such a demand had been raised, a specific contention raised before this Court is that as far as the demand of Rs.1,58,684.30 is concerned, the same is in relation to the vacant site. The 1st respondent has no authority to make such a demand. In the alternative, the learned counsel had also advanced an argument that even if such a demand is to be made it may be made by the revenue authorities definitely, but not the Urban Development Authority. This Court is not inclined to express any opinion relating to this aspect of the matter.

In view of the respective stands taken by the parties and also the Government Order referred to supra, this Court is of the considered opinion that the impugned order in substance does not suffer from any illegality whatsoever. However, in the light of the contentions

raised relating to the demand made in the impugned order under 2(b) i.e. “the area of vacant site is 15868.43 square meters. Rs.10/- per square metre, therefore, the total value is Rs.1,58,684.30”, the demand so far as it relates to the amount of Rs.1,58,684.30 is hereby set aside and the matter is remitted to the 1st respondent to reconsider it after putting the petitioner on notice and to pass appropriate orders in this regard. In all other respects, the impugned order is hereby confirmed.

Accordingly, the writ petition is partly allowed. No order as to costs.

13.09.2006

bcj